

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 366 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

RASHNA ADIE CONTRACTOR

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Appearance:

MR MANISH R BHATT for Petitioner  
MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 23/04/99

#### ORAL JUDGEMENT

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred a question of law arising out of its order in I.T.A. No. 656/Ahd/82 relating to A.Y. 1977-78 dated 27.6.1983. The question reads as under:-

"Whether on the facts and in the circumstances of the case, the tribunal was right in law in

coming to the conclusion that the depreciation allowed to the deceased Adie Contractor from whom the assessee had inherited the asset should not be taken into account and adjusted from the value of 1.1.51 for the purpose of computation of cost of asset for taking capital gain.

2. It has been pointed out by the Learned Counsel for the parties that like question referred in the case of Mini Adi Contractor arisen out of the very same order of the Tribunal has been subject matter of T.T.R.No.164/84 which has been decided by this Court on 28/29-12-98. The question has been answered in favour of the assessee and against the Revenue.

2. As a result of the aforesaid discussion, we are of the opinion that the deduction of depreciation allowed to the deceased is not permissible for the purpose of reducing the cost of acquisition of capital asset for the purpose of computing capital gains in case capital gains arising in the hands of successor of transfer of capital asset in case it falls within the provisions of sub-sec.(2) of sec.50 and an option to adopt fair market value as on 1.1.51 as its cost of acquisition in place of written down value has been exercised by the assessee. The computation thereafter must follow the procedure provided in sec. 50(2) and other provisions of the Act.

3. Following the aforesaid decision, we answer the question referred to us in favour of the assessee i.e. in favour of assessee and against the Revenue in the affirmative.

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